

CARMEL CITY CODE
CHAPTER 10: ZONING & SUBDIVISIONS
ARTICLE 1: ZONING CODE
CARMEL ZONING ORDINANCE
CHAPTER 21: SPECIAL USES & SPECIAL EXCEPTIONS

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21.00 Special Uses and Special Exceptions.¹

21.01 General Information.

Special Use or Special Exception approval by the Board shall be necessary prior to the establishment of a Special Use or Special Exception, so cited by the district regulations herein, or the issuance of an Improvement Location Permit for said Special Use. Special Uses shall generally be considered favorably by the Board, except in cases where the Board finds the proposed Special Use obviously inappropriate as a result of special and unique conditions determined as a result of the review procedure established herein.

21.02 Procedure.²

21.02.01 Procedure Generally. Whenever an application for a Special Use or Special Exception within the jurisdiction of this Ordinance is made, it shall follow the procedure set forth herein and shall conform to the regulations and requirements of this Ordinance.

21.02.02 Consultation with the Director and Application. Applicants shall meet with the Director to review the zoning classification of their site, review copies of the regulatory ordinances and materials, review the Special Use or Special Exception procedures and examine the proposed use and development of the property. The Director shall aid and advise the applicant in preparing his application and supporting documents as necessary. The applicant shall then submit two (2) copies of the written application form and all necessary supporting documents and materials.

21.02.03 Initial Review of the Application and Supporting Documents and Materials by the Director; Submission to the Board. Following the receipt of the written application and necessary supporting documents and materials by the Director, he shall then review the materials solely for the purpose of determining whether the application is complete and in technical compliance with all applicable ordinances, laws and regulations, and therefore entitled to be forwarded to the Board. If the materials submitted by the applicant are not complete or do not comply with the

¹ Section 21.00 amended per Ordinance No. Z-320.

² Section 21.02 amended per Ordinance No. Z-365-01; Z-460-04, §a.

necessary legal requirements, the Director shall inform the applicant of the deficiencies in said materials. Unless and until the Director formally accepts the Special Use or Special Exception application as complete and in legal compliance, it shall not be considered as formally filed for the purpose of proceeding to succeeding steps toward Special Use or Special Exception approval as hereinafter set forth. Within thirty (30) days of the formal acceptance of the application by the Director, he shall formally file the application by placing it upon the agenda of the Board, according to the Board's Rules of Procedure.

21.02.04 Public Hearing by the Board. Once the Director has accepted and filed the application with the Board, the Board or its delegate shall assign a docket number and set a date and time for a public hearing as required by the Rules of Procedure of the Board. The applicant shall be responsible for the cost and publication of the required published legal notification of the public hearing. The applicant shall also notify all interested parties and property owners as required by the Rules of Procedure of the Board. The conduct of the public hearing shall be in accordance with the Board's Rules of Procedure.

21.02.05 Approval or Denial of the Special Use or Special Exception Application by the Board. Upon approval of the Special Use or Special Exception, the Board shall inform the Director that he may issue Improvement Location Permits for the Special Use or Special Exception and inform the applicant of the time limits set forth in *Section 21.02.07*. The Board shall inform the applicant that he may apply to the Director for Improvement Location Permits for the Special Use or Special Exception, if necessary, or may commence the Special Use or Special Exception if no permits are required. Failure of the Director to inform the applicant of the time limits set forth in *Section 21.02.07* shall not relieve the applicant of complying with said Section.

A Special Use or Special Exception application that is denied by the Board is ineligible to be placed again on the Board's agenda for consideration until the legality of the Board's decision is finally determined by a court, pursuant to judicial review according to the Advisory Planning Law, or for a period of twelve (12) months following the date of the denial, whichever is later. In addition, whenever a Special Use or Special Exception application is denied, the property involved in the application may not be the subject of a different Special Use or Special Exception application, or any variance application or rezone proposal, for a period of six (6) months following the date of the denial.

21.02.06 Authorization. In no event shall a Special Use or Special Exception be established or an Improvement Location Permit be issued for improvements for a Special Use or Special Exception prior to the approval of the Special Use or Special Exception by the Board unless otherwise excepted herein.

21.02.07 Time Limit. Any person to whom a Special Use or Special Exception is granted by the Board, under the procedures set forth in this chapter, shall have commenced continuous construction of said Special Use or Special Exception or implemented said Special Use or Special Exception within one year of the date of the granting of the approval or said approval shall become null and void.

Upon application to the Director before the expiration of said approval, and upon good cause shown, said approval may be extended for six (6) months.

21.03 Basis of Board Review³

The Board, in reviewing the Special Use or Special Exception application, shall give consideration to the particular needs and circumstances of each application and shall examine the following items as they relate to the proposed Special Use or Special Exception:

1. Topography;
2. Zoning on site;
3. Surrounding zoning and land Use;
4. Streets, curbs and gutters and sidewalks;
5. Access to public streets;
6. Driveway and curb cut locations in relation to other sites;
7. General vehicular and pedestrian traffic;
8. Parking location and arrangement;
9. Number of parking spaces needed for the particular Special Use;
10. Internal site circulation;
11. Building height, bulk and setback;
12. Front, side and rear yards;
13. Site coverage by building(s), parking area(s) and other structures;
14. Trash and material storage;
15. Alleys, service areas and loading bays;
16. Special and general easements for public or private Use;
17. Landscaping and tree masses;
18. Necessary screening and buffering;
19. Necessary fencing;
20. Necessary exterior lighting;
21. On-site and off-site, surface and subsurface storm and water drainage;
22. On-site and off-site utilities;
23. Dedication of streets and rights-of-way;
24. Proposed signage (subject to regulations established by the Sign Ordinance); and
25. Protective restrictions and/or covenants.
26. Need for lifeguards and other supervisory personnel, in respect to a private recreational development or facility.

³ Section 21.03 amended per Ordinance No. Z-365-01.

21.04 Basis of Board Approval or Rejection.

21.04.01 Special Use Decisions. The Board, in approving or rejecting a Special Use application, shall base its decision upon the following factors as they relate to the above listed items (*Section 21.03*) concerning the proposed Special Use:

1. The particular physical suitability of the premises in question for the proposed Special Use.
2. The economic factors related to the proposed Special Use, such as cost/benefit to the community and its anticipated effect on surrounding property values.
3. The social/neighborhood factors related to the proposed Special Use, such as compatibility with existing uses and those permitted under current zoning in the vicinity of the premises under consideration and how the proposed Special Use will effect neighborhood integrity.
4. The adequacy and availability of water, sewage and storm drainage facilities and police and fire protection.
5. The effects of the proposed Special Use on vehicular and pedestrian traffic in and around the premises upon which the Special Use is proposed.

21.04.02 Special Exception Decisions. A Special Exception application may be approved by the Board only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community, in relation to the above listed items (*Section 21.03*) concerning the proposed Special Exception;
2. The use and value of the area adjacent to the premises under consideration will not be affected in a substantially adverse manner;
3. The need for the Special Exception arises from the applicant's responsibility to provide public utility service, and not from any condition peculiar to the premises under consideration;
4. It will constitute an unnecessary hardship for the applicant if the Special Exception is denied, in that there are no existing or approved towers or other structures in the vicinity of the premises under consideration which would be suitable for the collocation of the equipment that the applicant needs to locate in such vicinity, having regard to the following factors:
 - a. Whether the needed equipment would exceed the structural capacity of such existing or approved towers or structures, as documented by a qualified professional engineer, and whether such towers or structures could be reinforced, modified, or replaced to accommodate the needed or equivalent equipment at a reasonable cost;
 - b. Whether the needed equipment would cause interference materially impacting the usability of existing or planned equipment at such existing or approved towers or structures, as documented by a qualified professional engineer, and whether such interference could be prevented at reasonable cost; and
 - c. Whether the needed equipment could be accommodated on such existing or approved towers or structures at a height necessary to function reasonably, as documented by a qualified professional engineer; and
5. The approval of the Special Exception does not interfere substantially with the Comprehensive Plan, in that there are no alternative sites suitable (having regard to the

factors listed above in subparagraph (4)) for the equipment that the applicant needs to locate in the vicinity which are located in either Business, Industrial, or Manufacturing Districts, or on property outside of the jurisdiction or otherwise exempt from the requirements and procedures of this Zoning Ordinance.

21.05 Expansion of Approved Special Uses or Special Exceptions.

An approved Special Use or Special Exception may be expanded up to ten percent (10%) of the approved gross floor area without obtaining further Special Use or Special Exception approval if the approved use or exception is continued in the expansion, if the particular building height, bulk, setback, yard, parking, *etc.* requirements are adhered to and if the proper permits for the expansion, such as an Improvement Location Permit, are obtained.

21.06 Special Uses or Special Exceptions in Flood Plain Districts.⁴

The Board may not exercise Special Use or Special Exception approval in any of the Flood Plain Districts (FP, FW or FF) until the Board has received written approval from the Indiana Natural Resources Commission for the proposed Special Use or Special Exception, including any reports supplementary thereto.

21.07 Provisions for Financial Performance and Maintenance Guarantees for Special Uses.

As a prerequisite to Special Use approval on projects subject to new construction, the developer shall agree to provide financial performance and maintenance guarantee for public facility improvements and installations to be constructed in and, as necessary for proper connection and system coordination, adjoining the proposed Special Use. The public facility improvements and installations shall include streets (base and paving, individually), curbs and gutters, sidewalks, storm water drainage and storm sewer systems, sanitary sewer systems, water supply systems, street name signs, monuments and markers and the various appurtenances related thereto. All construction shall be according to plans submitted as a portion of the Special Use application and accompanying data, subject to standards and specifications cited herein. Non-public facility improvements and installations shall be subject to financial guarantees established by their ownership.

21.07.01 Performance Guarantee. Prior to or at the time of Special Use approval, the developer shall be required to provide financial performance guarantee, by certified check, letter of credit, or performance bond running to:

- A. City of Carmel jurisdiction: City of Carmel
- B. Hamilton County jurisdiction: Board of Commissioners of Hamilton County

The financial performance guarantee shall provide for the completion of all public facility improvements and installations required under the provisions of this Ordinance, and shall be conditioned upon the following:

1. The completion of public facility improvements and installations shall be within two (2) years from the approval of the Special Use.
2. A penal sum shall be fixed and approved by the Board equal to one hundred percent (100%) of the total estimated current cost to the City or County of all public facility

⁴ For additional regulations regarding Flood Plain Districts, see *Chapter 22: Flood Hazard Districts.*

improvements and installations provided in the Special Use application and accompanying data according to specifications cited herein.

3. Each public facility improvement or installation provided in the Special Use application or accompanying data shall be bonded individually, or shall have an individual letter of credit or certified check to cover the penal sum, and shall not have the performance guarantee provided in combination with any of the other public facility improvements and installations.
4. The performance bond, certified check, or letter of credit shall be issued in the name of the owner, developer, contractor or other responsible party as determined by the Board.

21.07.02 Extension of Completion Time and Non-Performance:

1. Should the developer not complete the public facility improvements and installations as herein required within the stated two (2) year period, the Director may approve an extension of up to two (2) years, granted at six-month intervals, for completion of the required public facility improvements and installations.
2. Should the developer not complete the public facility improvements and installations as herein required within the two-year period, or within any time extension approved by the Director, the proper authorities may take the necessary steps to proceed with the completion of the public facility improvements and installations, making use of the certified check, letter of credit, or performance bond.

21.07.03 Release of Performance Guarantee. Upon the faithful completion of the required public facility improvements and installations according to the Special Use application and accompanying data and the specifications cited herein, the developer shall inform the Director who shall confirm that said public facility improvements and installations have been completed in conformity with this Ordinance. Following said confirmation, the subdivider shall provide the Director with two (2) sets of “as-built” plans showing the storm water drainage and storm sewer systems, water supply system, sanitary sewer system and monuments and markers as they were installed. The developer may then request the release of the performance guarantee posted with the appropriate authority. Upon the receipt of a maintenance guarantee, as specified herein, the appropriate authority shall release the performance guarantee within sixty (60) days. The performance guarantee for each individual public facility improvement or installation may be handled separately and shall in no way be contingent on the completion of any of the other individual public facility improvements and installations or their performance guarantees.

21.07.04 Maintenance Guarantee. Prior to the release of the performance guarantee, the developer shall be required to provide financial maintenance guarantee, by certified check payable to the appropriate authority or maintenance bond running to the appropriate authority, that all public facility improvements and installations required under the provisions of this Ordinance shall be maintained according to specifications cited herein. Said financial maintenance guarantee shall be conditioned upon the following:

1. The maintenance guarantee shall run and be in force for a period of three (3) years from the date of release of the performance guarantee.
2. A penal sum shall be fixed and approved by the Board but in no case shall the penal sum be less than fifteen percent (15%) of the total performance guarantee for streets and ten percent (10%) of the performance guarantee for all other public facility improvements and installations. The minimum maintenance guarantee to be posted for streets shall be no less than \$5,000.00.
3. Each public facility improvement or installation shall be bonded individually, or shall have an individual certified check to cover the penal sum, and shall not have the

maintenance guarantee provided in combination with any of the other public facility improvements and installations.

4. The maintenance bond shall be issued in the developer's name alone or in the name of the developer and his subcontractor as co-signers. All certified checks provided for financial maintenance guarantee shall be signed by the developer alone.

21.07.05 Releases of Maintenance Guarantee. All maintenance bonds shall expire at the end of the three (3) year period for which they were established. Within sixty (60) days of the expiration date, the appropriate authority shall return said expired maintenance bonds to the developer. In the case where a certified check has been posted as a maintenance guarantee, the developer shall, at the end of the three (3) year maintenance period, contact the appropriate authority in order to obtain the release of the maintenance guarantee. The appropriate authority shall return said maintenance guarantee to the developer within sixty (60) days. The maintenance guarantee for each individual public facility improvement or installation may be handled separately and shall in no way be contingent on the completion of any of the other individual public facility improvements and installations or their maintenance guarantee.

**CHAPTER 21: SPECIAL USES & SPECIAL EXCEPTIONS
AMENDMENT LOG**

| Ordinance No. | Docket No. | Council Approval | Effective Date | Sections Affected |
|----------------------|-------------------|-------------------------|-----------------------|----------------------------|
| Z-320 | | | | |
| Z-365-01 | 76-01a OA | November 5, 2001 | November 27, 2001 | 21.02.04; 21.03(26) |
| Z-460-01 | 04080064 OA | December 20, 2004 | December 20, 2004 | 21.02.05 Winter 2005 v1 |
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